

Notice of Allowability

Application No.

10/763,995

Applicant(s)

MOON ET AL.

Examiner

Arnel C. Lavarias

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/25/06.
2. ☒ The allowed claim(s) is/are 21-34, 36-44 (renumbered 1-23).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
- ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
- ☐ Notice of Informal Patent Application
- ☒ Interview Summary (PTO-413), Paper No./Mail Date 10/5/06.
- ☒ Examiner's Amendment/Comment
- ☒ Examiner's Statement of Reasons for Allowance
- ☐ Other _____

DETAILED ACTION

Drawings

1. The replacement drawings were received on 9/25/06. These drawings are acceptable.

Response to Amendment

2. The amendments to the abstract and specification of the disclosure in the submission dated 9/25/06 are acknowledged and accepted. In view of these amendments, the objections to the specification in Sections 14-15 of the Office Action dated 6/9/06 are respectfully withdrawn.
3. The amendments to Claims 21, 26, 36 in the submission dated 9/25/06 are acknowledged and accepted.
4. The cancellation of Claims 20 and 35 in the submission dated 9/25/06 is acknowledged and accepted.

Response to Arguments

5. The Applicants' arguments, see in particular Pages 13-14 of the submission, filed 9/25/06, with respect to the rejections of Claims 20-21, 35 in the Office Action dated 6/9/06, have been fully considered and are persuasive. The rejections of Claims 20-21, 35 in Sections 17-19 of the Office Action dated 6/9/06 have been withdrawn.

Election/Restrictions

6. Claims 26 and 36 are allowable. Claims 22-25, previously withdrawn from consideration as a result of a restriction requirement, include all the limitations of an allowable claim. Pursuant to the procedures set forth in MPEP § 821.04(a), **the restriction requirement between Inventions I and II, as set forth in the Office action mailed on 12/27/05, is hereby withdrawn** and Claims 22-25 are hereby rejoined and fully examined for patentability under 37 CFR 1.104. In view of the withdrawal of the restriction requirement, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Allowable Subject Matter

7. Claims 21-34, 36-44 are allowed.

EXAMINER'S AMENDMENT

8. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37

Art Unit: 2872

CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with William J. Barber (203-261-1234) on 10/5/06.

The application has been amended as follows:

Page 9, line 22, at the beginning of the line, "Fig. 38" should read --Fig. 39--.

Claim 22, line 1, after "The method of claim", "20" should read --26--.

9. The following is an examiner's statement of reasons for allowance:

Claims 26 and 36 are allowable over the cited art of record for at least the reason that the cited art of record fails to teach or reasonably suggest a method of performing an assay process and an apparatus for reading microbeads, as generally set forth in Claims 26 and 36, the method and apparatus including, in combination with the steps and features recited in Claims 26 and 36, a portion of the particle substrate being made of a substantially single material and having at least one diffraction grating embedded therein, the grating having a resultant refractive index variation within the single material, the grating providing an output signal indicative of a code when illuminated by an incident light signal propagating from outside the substrate. Claims 21-25, 27-34, 37-44 are dependent on Claims 26 and 36, and hence are allowable for at least the same reasons Claims 26 and 36 are allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arnel C. Lavarias whose telephone number is 571-272-2315. The examiner can normally be reached on M-F 9:30 AM - 6 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on 571-272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2872

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Arnel C. Lavarias
Primary Examiner
Group Art Unit 2872
10/5/06

19/26

*Drawing Changes
Approved
KCC
10/4/06*

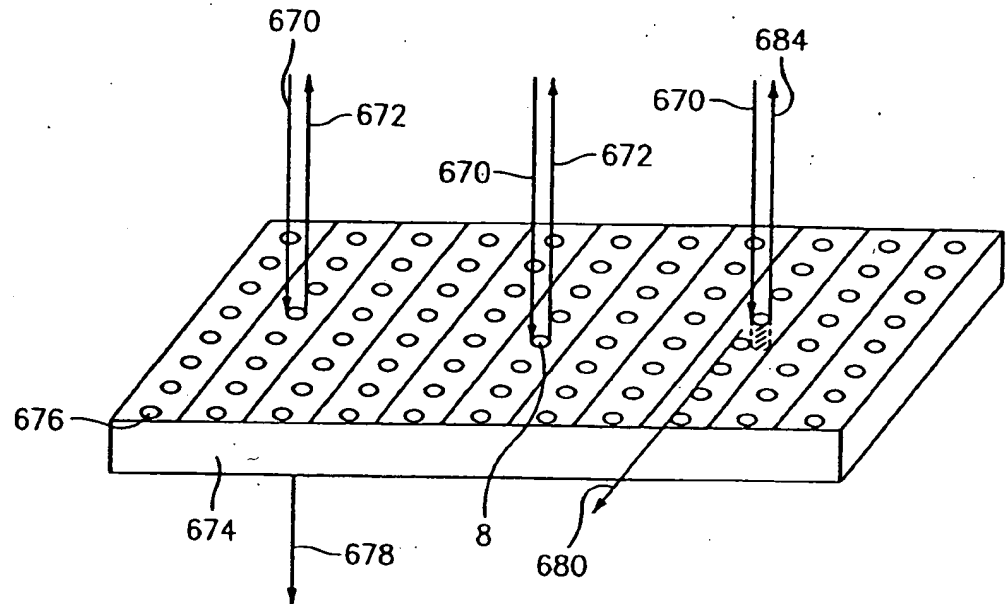


FIG. 40

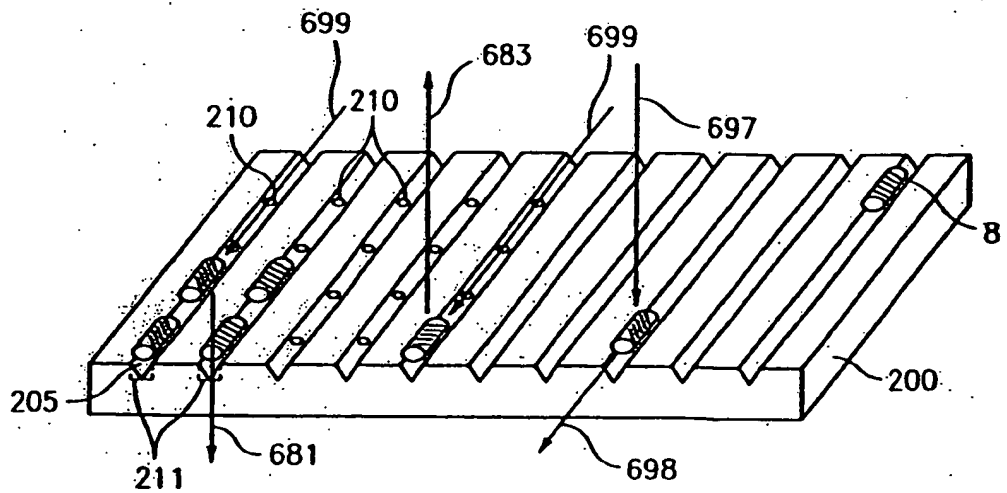


FIG. 41